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राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, मंगलवार, 12 अप्रैल, 1977/22 चैत्र, 1899

GOVERNMENT OF HIMACHAL PRADESH

EXCISE AND TAXATION DEPARTMENT

NOTIFICATION

Simla-171002, the 7th April, 1977

No. 11-4/71 E.&T.—In exercise of the powers conferred by section 56 of the Punjab Excise Act, 1914 (1 of 1914), as applied to the areas comprised in Himachal Pradesh immediately before the 1st November, 1966 and as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966, and all other powers enabling him in this behalf, the Governor, Himachal Pradesh, is pleased to exempt the following quantity of liquor/beer for consumption by the officers and troops of Snow and Avalanche Study Establishment stationed at Manali, from the payment of licence fee and excise duty subject to the condition that they will furnish a certificate to the effect that

the liquor will be used for genuine needs of the aforesaid Forces only:—

(i) Whisky	48	Bottles	per	mensum
(ii) Brandy	89	„	„	„
(iii) Gin	36	„	„	„
(iv) Beer	152	„	„	„
(v) Rum	446	„	„	„

2. The Snow and Avalanche Study Unit will not be entitled to any other quota except the quantity referred to above.

3. This issues with the concurrence of the Finance Department obtained *vide* their U.O. No. 890 dated 5-4-1977.

R. C. GUPTA,
Secretary.

VIDHAN SABHA SECRETARIAT

NOTIFICATIONS

Simla-171004, the 11th April, 1977

No. 1-17/77-VS.—In pursuance to rule 135 of the Rules of Procedure and Conduct of Business, Himachal Pradesh Legislative Assembly, 1973, the Salaries and Allowances of Ministers (Himachal Pradesh) (Second Amendment) Bill, 1977 (Bill No. 10 of 1977) having been introduced on the 11th April, 1977, is hereby published in the Gazette.

V. P. BHATNAGAR,
Secretary.

Bill No. 10 of 1977.

**THE SALARIES AND ALLOWANCES OF MINISTERS (HIMACHAL
PRADESH) (SECOND AMENDMENT) BILL, 1977**

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

*further to amend the Salaries and Allowances of Ministers (Himachal Pradesh)
Act, 1971 (Act No. 3 of 1971).*

BE it enacted by the Legislative Assembly of Himachal Pradesh in the
Twenty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Salaries and Allowances of Ministers
(Himachal Pradesh) (Second Amendment) Act, 1977.

Short title
and com-
mencement.

(2) It shall come into force at once.

2. In section 5 of the Salaries and Allowances of Ministers (Himachal
Pradesh) Act, 1971 for the words “three hundred” wherever occur the
words “five hundred” shall be substituted.

Amendment
of section 5.

STATEMENT OF OBJECTS AND REASONS

Of late it has been felt that the prices of petrol and other conveyance charges have gone on the high side. Consequently the conveyance allowance of rupees three hundred admissible to the Ministers is fairly inadequate. The Bill proposes to amend section 5 of the Salaries and Allowances of Ministers (Himachal Pradesh) Act, 1971 so as to increase the amount of conveyance allowance to rupees five hundred.

The Bill seeks to achieve the aforesaid object.

The SIMLA:
April, 1977.

RAM LALL,
Chief Minister.

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides for the enhancement of the rate of conveyance allowance from Rs. 300/- per month to Rs. 500/- per month. Mostly the Ministers avail themselves of the facility of the car at State expense and do not claim the conveyance allowance. As such no financial implications can be worked out. However, if a Minister draws conveyance allowance then there is a saving also because in that event the expenses on car to be provided by the State are not required to be incurred.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Nil

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION

[General Administration file No. GAD (PA)-4 (D)-12/77-GAC]

The Governor of Himachal Pradesh, having been informed of the subject matter of the Salaries and Allowances of Ministers (Himachal Pradesh) (Second Amendment) Bill, 1977, recommends, under Article 207 of the Constitution of India, the introduction and consideration of the Bill in the Legislative Assembly.

Simla-171004, the 11th April, 1977

No. 1-16/77-VS.—In pursuance to rule 135 of the Rules of Procedure and Conduct of Business, Himachal Pradesh Legislative Assembly, 1973, the Himachal Pradesh Legislative Assembly Speaker's and Deputy Speaker's Salaries (Third Amendment) Bill, 1977 (Bill No. 11 of 1977) having been introduced on the 11th April, 1977, is hereby published in the Gazette.

V. P. BHATNAGAR,
Secretary,

Bill No. 11 of 1977.

**THE HIMACHAL PRADESH LEGISLATIVE ASSEMBLY
SPEAKER'S AND DEPUTY SPEAKER'S SALARIES
(THIRD AMENDMENT) BILL, 1977**

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

further to amend the Himachal Pradesh Legislative Assembly Speaker's and Deputy Speaker's Salaries Act, 1971 (Act No. 4 of 1971).

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Himachal Pradesh Legislative Assembly Speaker's and Deputy Speaker's Salaries (Third Amendment) Act, 1977.

Short title and commencement.

(2) It shall come into force at once.

2. After section 3 of the Himachal Pradesh Legislative Assembly Speaker's and Deputy Speaker's Salaries Act, 1971 (hereinafter called the principal Act) the following new section 3-A shall be inserted, namely:—

Insertion of section 3-A

“3-A. *Sumptuary Allowance.*—In addition to the salary and other perquisites admissible to him under section 3, a sumptuary allowance at the rate of four hundred rupees per mensem shall also be paid to the Speaker.”.

3. In section 4 of the principal Act for the words “one thousand” and “one hundred and fifty” wherever occur the words “one thousand and five hundred” and “three hundred” shall be substituted, and shall be deemed to have been substituted, respectively, with effect from 16th April, 1976.

Amendment of section 4.

4. In section 6 of the principal Act for the words “three hundred” wherever occur the words “five hundred” shall be substituted.

Amendment of section 6.

5. Section 10-A of the principal Act, along with its heading, shall be omitted.

Omission of section 10-A.

STATEMENT OF OBJECTS AND REASONS

The experience has shown that by virtue of his office the Speaker of the Legislative Assembly has to incur additional expenditure. The expenditure increases during the sessions of the Legislative Assembly. It is, therefore, proposed to allow sumptuary allowance of Rs. 400/- p. m. to the Speaker by inserting a new section 3-A in the principal Act.

At present the Deputy Speaker is entitled to a salary of Rs. 1000/- p. m. along with the amenities of free transit etc., by railway. The Punjab Government have since increased the pay and house rent allowance of the Deputy Speaker from Rs. 800/- p. m. to Rs. 1500/- p. m. and house rent allowance from Rs. 200/- to Rs. 300/- p. m. With the increase of the salary and house rent allowance payable to the Deputy Speaker in Punjab, the salary and house rent allowance of Rs. 1000/- p. m. and Rs. 150/- p. m., are proposed to be increased to Rs. 1500/- p. m., and Rs. 300/- p. m. respectively on the Punjab pattern. It is also proposed to withdraw the other amenities of free transit etc., by railway which were so far admissible to him.

Similarly with the increase of the price of petrol and other charges, the conveyance allowance admissible to the Speaker and the Deputy Speaker is proposed to be increased from Rs. 300/- to Rs. 500/-.

This Bill seeks to achieve the aforesaid objects.

SIMLA:

Theth April, 1977.

RAM LALL,
Chief Minister.

FINANCIAL MEMORANDUM

Clause 2 of the Bill provides that a sumptuary allowance @ Rs. 400/- per month shall also be paid to the Speaker. This involves an additional recurring expenditure of rupees 4,800/- per annum.

Clause 3 of the Bill provides for the increase of the salary and house rent payable to the Deputy Speaker from Rs. 1,000/- p. m. to Rs. 1,500/- p. m. and from Rs. 150/- p. m. to Rs. 300/- p. m. respectively. Since the Deputy Speaker has been provided with the Government accommodation no additional expenditure is likely to be incurred on account of increase in the rate of house rent allowance, but the State Government have to incur the recurring expenditure of Rs. 6,000/- per annum on account of the increase in salary. Further arrears of salary @ Rs. 500/- p. m. with effect from the 16th April, 1976 will also be paid to the Deputy Speaker which will amount to Rs. 6,000/- approximately.

Clause 4 of the Bill provides for the increase in the rate of conveyance allowance from Rs. 300/- to Rs. 500/- per month which involves annual expenditure of Rs. 4,800/- per annum if the Speaker and the Deputy Speaker

use their own cars. **Clause 5** of the Bill also provides for the withdrawal of the facility of free railway passes available to the Deputy Speaker and there will be a saving of about Rs. 3,300/- per annum. There will be saving also because the expenses on car provided by the State Government are not required to be incurred.

To sum-up, the total recurring expenditure involved would be Rs. 12,300/- per annum (Rs. 4,800 plus Rs. 6,000/- plus Rs. 4,800/- minus Rs. 3,300/-) besides payment of arrears of about Rs. 6,000/- to Deputy Speaker.

MEMORANDUM ON DELEGATED LEGISLATION

Nil

RECOMMENDATIONS OF THE GOVERNOR UNDER ARTICLE 207 OF THE CONSTITUTION OF INDIA

[General Administration Department
File No. GAD(PA)-5(E)-3/76-GAC]

The Governor of Himachal Pradesh, having been informed of the subject matter of the Himachal Pradesh Legislative Assembly Speaker's and Deputy Speaker's Salaries (Third Amendment) Bill, 1977, recommends under Article 207 of the Constitution of India, the introduction and consideration of the Bill in the Legislative Assembly.

Simla-171004, the 11th April, 1977

No. 1-19/77-VS.—In pursuance to rule 135 of the Rules of Procedure and Conduct of Business, Himachal Pradesh Legislative Assembly, 1973 the Himachal Pradesh Apartment (Regulation of Construction and Transfer) Bill, 1977 (Bill No. 12 of 1977) having been introduced on the 11th April, 1977, is hereby published in the Gazette.

V.P. BHATNAGAR,
Secretary.

Bill No. 12 of 1977

**THE HIMACHAL PRADESH APARTMENT
(REGULATION OF CONSTRUCTION AND TRANSFER) BILL, 1977**

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

**A
BILL**

to regulate the construction and transfer of apartments in Himachal Pradesh.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-eighth Year of the Republic of India, as follows:—

1. (1) This Act may be called the Himachal Pradesh Apartment (Regulation of Construction and Transfer) Act, 1977.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of Himachal Pradesh.

(3) This section shall come into force at once; and the remaining provisions of this Act shall come into force in such areas and on such dates as the State Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different areas.

2. This Act applies only to an apartment, in respect of which the promoters executes and submit a declaration before a competent authority in such manner as may be prescribed that he intends to submit the property to the provisions of the Himachal Pradesh Apartment Ownership Act, 1977.

Application
of the Act.

3. In this Act, unless the context otherwise requires,—

Definitions

- (a) “declaration” means the instrument by which the property is submitted to the provisions of this Act;
- (b) “promoter” means a person who has already constructed or intends to construct apartments for the purpose of selling them to other persons and includes the Government; and
- (c) the expressions “apartment”, “building”, “competent authority” and “property” shall have the same meanings assigned to them respectively in the Himachal Pradesh Apartment Ownership Act, 1977.

4. Any promoter who intends to sell an apartment shall, on demand by an intending transferee,—

General li-
abilities of
promoters.

- (a) make full and true disclosure in writing of the nature of his interest in the land and building, if any, in which the apartments are or are to be constructed;
- (b) make full and true disclosure in writing of all encumbrances, if any, affecting such land or building;
- (c) disclose and give inspection of the plans and specifications of the entire building of which the proposed apartments form part and furnish copies thereof;
- (d) disclose in writing the nature of fixtures, fittings, and amenities which have been or are proposed to be provided;

- (e) disclose in writing the particulars as respects the materials which have been or proposed to be used in the construction of the building together with the details of all agreements entered into by him with the architects and contractors;
- (f) specify in writing the date by which possession of the apartment is to be handed over to such transferee;
- (g) supply in writing a list of all the apartments which have already been taken or agreed to be taken, together with their distinctive numbers, names and addresses of the transferees either actual or intended, the prices paid or charged by or upon them and any other particulars as may be prescribed;
- (h) make a full and true disclosure in writing of all out-goings including ground rent, if any, municipal or other local taxes, taxes on income, water charges and electricity charges, revenue assessment, interest on any mortgage or other encumbrances, if any, in relation to the land, building and the apartments;
- (i) make a full and true disclosure in writing of such other information and documents including true copies of such documents as may be prescribed.

Agreement to precede advance payment.

5. Notwithstanding anything contained in any other law, a promoter who intends to transfer any apartment shall, before accepting any sum from an intending transferee as advance payment or deposit, enter into a written agreement for sale with such transferee which shall be registered as a document compulsorily registerable under clause (b) of sub-section (1) of section 17 of the Registration Act, 1908:

16 of 1908

Provided that for the purposes of this section advance payment will not include the earnest money as prescribed under the Himachal Pradesh Housing Board Allotment, Management and Sale of Houses Plot Regulations, as amended from time to time.

No additions or alteration after disclosure of plans etc.

6. After the plans, specifications and the nature of the fixtures, fittings, and amenities are disclosed to the intending transferee under section 4, the promoter shall not make any alteration therein —

- (i) if it affects a single apartment, without the previous consent in writing of that transferee who intends to take the said apartment, and
- (ii) if it affects more than one apartment, without the previous consent in writing of all the transferees who intend to take those apartments.

Offences by promoter.

7. Any promoter who knowingly makes a false disclosure in respect of any of the matters referred to in clauses (a), (b), (g) or (h) of section 4 or contravenes the provisions of section 6, shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees, or with both.

Offences by companies.

8. (1) If the promoter committing an offence under this Act is a company, every person who at the time when the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to such punishment as provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to, the negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. — For the purposes of this section:—

(a) “company” means a body corporate and includes a firm or other association of individuals; and

(b) “director” in relation to a firm means a partner in the firm.

9. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out all or any of the purposes of this Act.

Power to make rules.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly when it is in session for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the sessions aforesaid, the Assembly makes any modification in the rules or decides that the rules should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

10. No suit or other legal proceedings shall lie against the Government and no suit, prosecution or other legal proceedings shall lie against any officer or servant of the Government for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

Indemnity

11. No Court shall take cognizance of any offence under this Act except on complaint made with the previous sanction of the competent authority.

Bar to jurisdiction.

12. If any provision of this Act or any section, sentence, clause, phrase or word, or application thereof in any circumstances is held invalid, the validity of the remainder of this Act and of the application of any such provision, section, sentence, clause, phrase or word, in any other circumstances shall not be affected thereby.

Severability.

13. If any difficulty arises in giving effect to the provisions of this Act, the State Government may make such order or do such thing, not inconsistent with the provisions of this Act as appears to it to be necessary or expedient for removing the difficulty.

Power to remove difficulties.

STATEMENT OF OBJECTS AND REASONS

The Himachal Pradesh Housing Board has undertaken the construction of houses/flats for sale to different income groups at different places in the State. There is likelihood of certain other agencies either private or State owned coming up to promote construction of such apartments for sale. As such it is essential to make necessary legal provisions to check malpractices and irregularities which may be committed by such agencies in the sale of flats on ownership basis and to ensure that the construction of such flats is raised in the systematic and planned manner.

The Bill seeks to achieve the aforesaid objects.

SIMLA:
The

April, 1977.

SALIG RAM,
Minister-in-charge.

FINANCIAL MEMORANDUM

The provisions contained in the Bill shall be got implemented through the existing machinery of the Government. As such no financial implications are involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 9 of the Bill provides for making rules by the State Government for the purposes of the Bill and the rules so made shall be laid before the Legislative Assembly. This delegation is normal in character.

Simla-171004, the 11th April, 1977

No. 1-18/77-VS.—In pursuance to rule 135 of the Rules of Procedure and Conduct of Business, Himachal Pradesh Legislative Assembly, 1973, the Himachal Pradesh Apartment ownership, Bill, 1977 (Bill No. 13 of 1977) having been introduced on the 11th April, 1977 is hereby published in the gazette.

V. P. BHATNAGAR,
Secretary.

Bill No. 13 of 1977.

**THE HIMACHAL PRADESH APARTMENT OWNERSHIP
BILL, 1977**

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

A

BILL

to provide for the ownership of an individual apartment and to make such apartment heritable and transferable property, in Himachal Pradesh.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Twenty-eighth Year of the Republic of India, as follows:—

1. (1) This Act may be called the Himachal Pradesh Apartment Ownership Act, 1977.

Short title,
extent and
commence-
ment.

(2) It extends to the whole of Himachal Pradesh.

(3) This section shall come into force at once; and the remaining provisions of this Act shall come into force in such areas, and on such dates as the State Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas.

2. This Act applies only to property, the sole owner or all the owners of which submit the same to the provisions of this Act by duly executing and registering a declaration setting out the particulars referred to in section 12:

Application
of the Act.

Provided that no property shall be submitted to the provisions of this Act, unless it is mainly used or is proposed to be used, for residential purposes.

3. In this Act, unless the context otherwise requires,—

Definitions

- (a) “apartment” means a part of the property having a direct exit to a road, street or highway or to a common area leading to such road, street or highway which together with its undivided interest in the common areas and facilities forms an independent residential unit;
- (b) “association of apartment owners” means the association formed in accordance with the provisions made in the bye-laws;
- (c) “building” means a building containing two or more apartments or more than one building each containing two or more apartments comprised in the same property;
- (d) “common areas and facilities” includes—
 - (1) the land on which the building is located and all easements, rights and appurtenances belonging to the land and the building,
 - (2) the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stair-ways, fire-escapes and entrances and exits of the building.

- (3) the basements, cellars, yards, gardens, parking areas, shopping centres, schools, garages and storages spaces,
 - (4) the premises for the lodging of janitors or persons employed for the management of the property,
 - (5) installations of common services, such as power, light, gas, hot and cold water, heating, refrigeration, air-conditioning, sewerage, etc.,
 - (6) the elevators, tanks, pumps, motors, compressors, pipes and ducts and in general all apparatus and installations existing for the common use,
 - (7) such other common facilities as may be specially provided for in the declaration,
 - (8) all other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use;
- (e) "common expenses" means expenses of administration, maintenance, repair or replacement of the common areas and facilities and all other sums assessed against the apartment owners by the association of apartment owners;
- (f) "common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses;
- (g) "competent authority" means the estate manager as notified by the Housing Department of the Government of Himachal Pradesh;
- (h) "declaration" means the instrument by which the property is submitted to the provisions of this Act as hereinafter provided;
- (i) "limited common areas and facilities" means those common areas and facilities which may be designated in the declaration as reserved for use of certain apartment or apartments to the exclusion of other apartments;
- (j) "owner" in relation to a property or part thereof or an apartment, includes, for the purposes of this Act excepting the provisions of sub-section (1) of section 5 thereof, a lessee of such property or part or of such apartment, where the lease is for a period of twenty years or more;
- (k) "prescribed" means prescribed by rules made under this Act; and
- (l) "property" comprises the land, the building and the common areas and facilities.

A member of a co-op. society to be the owner of the apartment for a limited purpose.

4. Where a co-operative society is the owner of a property or any part thereof, a member of such society in legal occupation of an apartment comprised in such property or such part shall be deemed to be the owner of such apartment within the meaning of the provisions of this Act excepting those of sub-section (1) of section 5.

An apartment to be transferable and heritable property.

5. (1) Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment.

(2) An apartment, together with its undivided interest in the common areas and facilities, shall constitute heritable and transferable immovable property within the meaning of any law for the time being in force:

Provided that no apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment shall be partitioned or sub-divided for any purpose whatsoever.

(3) Notwithstanding anything contained in the Transfer of Property Act, 1882, or in any other law for the time being in force, but subject to the provisions of section 14 of this Act, any person,—

(a) acquiring by purchase, or

(b) taking lease of, for a period of twenty years or more, an apartment comprised in property submitted to the provisions of this Act, shall,—

(i) in respect of the said apartment, be subject to the provisions of this Act, and

(ii) execute and register the said apartment in such form, in such manner and within such period as may be prescribed, undertaking to comply, strictly with the bye-laws and with the covenants, conditions and restrictions set forth in the declaration.

(4) Any transfer made in contravention of the provisions of sub-section (3) shall be void.

6. Where an apartment is transferred to one person for a consideration paid or provided by another person for his own benefit, the transferee shall, notwithstanding anything in the Transfer of Property Act, 1882, or in the Indian Trusts Act, 1882, or in any other law for the time being in force, be deemed to be the real owner of such apartment, and no court shall entertain any claim of the person, paying or providing the consideration for title in such apartment on the ground that he did not intend to pay or provide such consideration for the benefit of the transferee and that the transferee is his benamidar, or on any other ground.

Benamidar of an apartment to be the real owner thereof.

7. (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration.

Common areas and facilities.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall not be altered without the consent of all the apartment owners expressed in an amended declaration duly executed and registered as provided in this Act. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains, and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument.

(3) The common areas and facilities shall remain undivided, and no apartment owner or other person shall bring any action for partition or division of any part thereof, unless the property has been withdrawn from the provisions of this Act.

(4) Each apartment owner may use the common areas and facilities for the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners.

(5) The work relating to the maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto shall be carried out in accordance with the provisions of this Act and the bye-laws made thereunder.

(6) The association of apartment owners shall have irrevocable right, to be exercised by the manager or the board of managers on behalf of the association, with such assistance as the manager or the board of managers, as the case may be, considers necessary, to have access to each apartment from time to time during reasonable hours, for the maintenance, repairs and replacement of any of the common areas and facilities therein or accessible therefrom or for making emergency repairs therein to prevent any damage to the common areas and facilities or to other apartments.

Compliance with bye-laws, covenants etc.

8. Each apartment owner shall comply strictly with the bye-laws and with the covenants, conditions and restrictions set forth in the declaration. Failure to comply with any of the same shall be a ground for an action to recover damages or for other relief or reliefs at the instance of the manager or the board of managers on behalf of the association of apartment owners or, in a proper case, by an aggrieved apartment owner.

Certain work prohibited.

9. No apartment owner shall do any work which would be prejudicial to the soundness or safety of the property or would reduce the value thereof or impair any easement or hereditament or shall add any material structure or excavate any additional basement or cellar.

Encumbrances against apartments.

10. During the period the property remains subject to this Act, no encumbrance of any nature shall be created against the property. During such period an encumbrance may, however, be created only against each apartment and the percentage of undivided interest in the common areas and facilities appurtenant to each apartment, in the same manner as in relation to any other separate parcel of property subject to individual ownership.

Common profits and expenses.

11. The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities.

Contents of declaration.

12. (1) The declaration referred to in section 2 shall be submitted in such form and in such manner as may be prescribed and shall contain the following particulars, namely:—

- (a) description of the property;
- (b) nature of interest of the owner or owners in the property;
- (c) existing incumbrance, if any, affecting the property;
- (d) description of each apartment containing its location, approximate area, number of rooms, immediate common area to which it has access, and any other data necessary for its proper identification;
- (e) description of the common areas and facilities;
- (f) description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;

(g) value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities to each apartment and its owner for all purposes, including voting; and

(h) such other particulars as may be prescribed.

(2) The declaration referred to in sub-section (1) may be amended under such circumstances and in such manner as may be prescribed.

13. (1) Any declaration referred to in section 2 or any amendment thereto or any instrument referred to in sub-section (3) of section 5, shall, in the first instance, be submitted, in duplicate, within fifteen days from the date of its execution, to the competent authority along with copies of site plans, building plans and relevant title deeds.

A declaration or an instrument to be submitted before the competent authority and to be dealt with by him.

(2) On receipt of a declaration or an amendment thereto or an instrument referred to in sub-section (1), the competent authority shall,—

(a) after holding such inquiry, it may consider necessary for the purpose, examine the declaration, the amendment or the instrument, as the case may be, to ascertain whether—

(i) the property concerned comes within the purview of this Act, and

(ii) the declaration, the amendment or the instrument is in order,

(b) by an order in writing, giving reasons therefor, accept or reject the declaration, the amendment or the instrument, and

(c) in case of acceptance, immediately return the declaration, the amendment or the instrument along with all the enclosures to the owner or owners, as the case may be, for registration, within fifteen days of the date of return.

(3) Any person, being aggrieved by an order of rejection, may within thirty days from the date of such order or within such further period as the appellate authority may allow on sufficient grounds being shown, appeal to the State Government whose order on the appeal shall be final.

(4) Any order referred to in clause (b) of sub-section (2) or in sub-section (3) shall not be called into question in any court of law.

14. (1) All the apartment owners may withdraw property from the provisions of this Act by an instrument executed to that effect.

Withdrawal from the provisions of the Act.

(2) Upon the property being withdrawn from the provisions of this Act, it shall be deemed to be owned in common by the apartment owners and the share of each such owner in the property shall be percentage of undivided interest previously owned by such owner in the common areas and facilities.

(3) Any encumbrance affecting any of the apartments shall be deemed to be transferred in accordance with the existing priority to the percentage of the undivided interest of the apartment owner in the property as provided herein.

Instrument of declaration etc. compulsorily registerable.

15. (1) All instruments relating to the declaration or any amendment thereto referred to in section 12 or the withdrawal of a property from the provisions of this Act referred to in section 14 or the instrument referred to in sub-section (3) of section 5 shall be deemed to be instruments compulsorily registerable within the meaning of clause (d) of sub-section (1) of section 17 of the Registration Act, 1908.

(2) The withdrawal provided in section 14 shall in no way bar the subsequent resubmission of the property to the provisions of this Act.

Bye-laws

16. (1) Every property shall be administered in accordance with such bye-laws as may be framed by the competent authority with the prior approval of the State Government.

(2) The bye-laws shall provide for the following amongst other matters, namely:—

- (a) the manner in which the association of apartment owners is to be formed, the election of a board of managers from among the apartment owners, the number of persons constituting the board, the number of members of such board to retire annually, the powers and duties of the board; the honorarium, if any, of the members of the board; the method of removal from office of members of the board; the powers of the board to engage the services of a secretary or manager, delegation of powers and duties to such secretary or manager;
- (b) method of calling meetings of the apartment owners and the number to constitute a quorum;
- (c) election of a president who shall preside over the meetings of the board and of the association of apartment owners;
- (d) maintenance, repair and replacement of the common areas and facilities and payments therefor;
- (e) manner of collecting share of the common expenses from the apartment owners;
- (f) any other matter considered to be necessary for the administration of the property.

Separate assessment.

17. Notwithstanding anything to the contrary in any other law for the time being in force, each apartment of a property including its percentage of undivided interest in the common areas and facilities thereof the owner of which does not own any other apartment in such property, shall be deemed to be a separate unit for the purpose of assessment of municipal rates and taxes.

Charge for property of common expenses.

18. All sums assessed by the association of apartment owners for the share of the common expenses chargeable to any apartment shall constitute a charge on such apartment prior to all other charges, except charge, if any, on the apartment for payment of municipal rates and taxes.

Liability for unpaid common expenses.

19. Upon the sale of an apartment, the purchaser of the apartment shall be jointly and severally liable with the vendor for all unpaid assessments against the latter for his share of the common expenses upto the time of the sale.

Penalty

20. (1) If the owner of any apartment subject to the provisions of this Act, contravenes—

- (a) any of the provisions of section 9 or section 10,
- (b) any bye-law that may be framed by the competent authority, or
- (c) any covenant, condition or restriction set forth in the declaration to which he is subject or a party,

he shall, at the instance of the manager, or the board of managers, on behalf of the association of the apartment owners, an aggrieved apartment owner or, in a proper case, the competent authority, on conviction before a magistrate, be liable to a fine which may extend to rupees one thousand or to a term of imprisonment which may extend to six months or to both, and in case of continuing contravention, to additional fine which may extend to rupees fifty for every day during which such contravention continues after conviction for the first such contravention.

(2) Any contravention punishable under sub-section (1) may, where prosecution lies or is instituted at the instance of, or, by the manager or the board of managers on behalf of the association of the apartment owners, be compounded by such association, either before or after the institution of the prosecution, on payment of, for credit to its fund, such sum as it may think fit.

(3) The provisions of this section shall apply without prejudice to those of sections 8, 18 and 19.

21. The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rule.

22. Every rule or bye-laws made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Assembly makes any modification in the rules or bye-laws, as the case may be, or decides that the rules or bye-laws should not be made, the rule or bye-law shall thereafter, have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or an annulment, shall be without prejudice to the validity of anything previously done under that rule or bye-law.

Rules and bye-laws to be laid before State Legislature.

23. If any difficulty arises in giving effect to the provisions of this Act the Government may, by order published in the Official Gazette, make such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of such difficulty.

Power to remove difficulty.

24. For the removal of doubts, it is hereby declared that the provisions of the Transfer of Property Act, 1882 shall, in so far as they are not inconsistent with the provisions of this Act, apply to every apartment together with its undivided interest in the common areas and facilities as those provisions apply in relation to any other immovable property.

Removal of doubts.

25. If any provision of this Act or any section, sentence, clause, phrase or word, or application thereof in any circumstances is held invalid, the validity of the remainder of this Act and of the application of any such provision, section, sentence, clause, phrase or word, in any other circumstances shall not be affected thereby.

Severability

STATEMENT OF OBJECTS AND REASONS

The Himachal Pradesh Housing Board has undertaken the construction of houses/flats for sale for different income groups, at different places in the State. There is likelihood that other agencies, whether State owned or private owners, may come up to promote construction of such apartments for sale. In view of this it is felt necessary to make a provision in law to regulate the matters relating to the conferment of heritable and transferable titles by the Himachal Pradesh Housing Board and other agencies on the prospective owners, and other matters ancillary thereto.

The Bill seeks to achieve the aforesaid objective.

The **SIMLA:**
April, 1977.

SALIG RAM,
Minister-in-charge.

FINANCIAL MEMORANDUM

The provisions contained in the Bill shall be got implemented through the existing machinery of the Government. As such no financial implications are involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clauses 7 (5) and 16 of Bill provide for the making of bye-laws, and Clause 21 of the Bill empowers the State Government to make rules, for the purposes of the Bill. By virtue of the provisions contained in clause 22 every rule or bye-law made under the proposed Bill shall be laid before the Legislative Assembly. This delegation is normal in character.